

AMENDED IN ASSEMBLY MAY 16, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2482**

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**Introduced by Assembly Member Harman**

February 23, 2006

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An act to amend and repeal Section 1282.4 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 2482, as amended, Harman. Arbitration: legal representation.

Existing law, effective until January 1, 2007, permits persons admitted to the bar of any other state to represent a party in an arbitration proceeding in this state, or to render legal services in this state in connection with an arbitration proceeding in another state. Existing law requires out-of-state attorneys representing a party in a California arbitration proceeding to serve upon the arbitrator, the State Bar of California, the parties, and counsel, a certificate containing specified information prior to the first scheduled hearing in the arbitration. Existing law also permits any party to an arbitration arising under certain collective bargaining agreements to be represented by any person.

*This bill would revise those provisions to require out-of-state attorneys to serve upon the arbitrator, the parties, and counsel, a certificate containing specified information within a reasonable period of time after the attorney expresses his or her intent to appear in an arbitration. This bill would require, if the certificate of that attorney is approved by the arbitrator, to file the approved certificate with the State Bar of California. This bill would require the State Bar of California to report findings and recommendations, as specified,*

*regarding the appearance of out-of-state attorneys in arbitration hearing or proceedings in this state to the Legislature by July 1, 2009.*

This bill would remove the January 1, 2007, repeal date, thereby extending those provisions indefinitely, and make—~~a~~ related, conforming ~~change~~ *changes*.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1282.4 of the Code of Civil Procedure,  
2     as amended by Section 1 of Chapter 607 of the Statutes of 2005,  
3     is amended to read:

4     1282.4. (a) A party to the arbitration has the right to be  
5     represented by an attorney at any proceeding or hearing in  
6     arbitration under this title. A waiver of this right may be revoked;  
7     but if a party revokes ~~such~~ *that* waiver, the other party is entitled  
8     to a reasonable continuance for the purpose of procuring an  
9     attorney.

10    (b) Notwithstanding any other provision of law, including  
11    Section 6125 of the Business and Professions Code, an attorney  
12    admitted to the bar of any other state may represent the parties in  
13    the course of, or in connection with, an arbitration proceeding in  
14    this state, provided that the attorney, if not admitted to the State  
15    ~~Bar of California, timely files the certificate described in~~  
16    ~~subdivision (c) and the attorney's appearance is approved by the~~  
17    ~~arbitrator, the arbitrators, or the arbitral forum.~~

18    ~~(c) Prior to the first scheduled hearing in an arbitration, the~~  
19    ~~attorney described in subdivision (b) shall serve a certificate on~~  
20    ~~the arbitrator or arbitrators, the State Bar of California, and all~~  
21    ~~other parties and counsel in the arbitration whose addresses are~~  
22    ~~known to the attorney. In the event that the attorney is retained~~  
23    ~~after the first hearing has commenced, then the certificate shall~~  
24    ~~be served prior to the first hearing at which the attorney appears.~~  
25    ~~The certificate shall state all of the following: Bar of California,~~  
26    ~~satisfies all of the following:~~

27    ~~(1) He or she timely serves the certificate described in~~  
28    ~~subdivision (c).~~

1     (2) *The attorney's appearance is approved in writing on that*  
2 *certificate by the arbitrator, the arbitrators, or the arbitral*  
3 *forum.*

4     (3) *The approval of the attorney's appearance is filed with the*  
5 *State Bar of California and served on the parties as described in*  
6 *this section.*

7     (c) *Within a reasonable period of time after the attorney*  
8 *described in subdivision (b) indicates an intention to appear in*  
9 *the arbitration, the attorney shall serve a certificate in a form*  
10 *prescribed by the State Bar of California on the arbitrator,*  
11 *arbitrators, or arbitral forum and all other parties and counsel in*  
12 *the arbitration whose addresses are known to the attorney. The*  
13 *certificate shall state all of the following:*

14     (1) *The case name and number, and the name of the*  
15 *arbitrator, arbitrators, or arbitral forum assigned to the*  
16 *proceeding in which the attorney seeks to appear.*

17     ~~(1)~~

18     (2) *The attorney's residence and office address.*

19     ~~(2)~~

20     (3) *The courts before which the attorney has been admitted to*  
21 *practice and the dates of admission.*

22     ~~(3)~~

23     (4) *That the attorney is currently a member in good standing*  
24 *of, and eligible to practice law before, the bar of those courts.*

25     ~~(4)~~

26     (5) *That the attorney is not currently on suspension or*  
27 *disbarred from the practice of law before the bar of any court.*

28     ~~(5)~~

29     (6) *That the attorney is not a resident of the State of*  
30 *California.*

31     ~~(6)~~

32     (7) *That the attorney is not regularly employed in the State of*  
33 *California.*

34     ~~(7)~~

35     (8) *That the attorney is not regularly engaged in substantial*  
36 *business, professional, or other activities in the State of*  
37 *California.*

38     ~~(8)~~

39     (9) *That the attorney agrees to be subject to the jurisdiction of*  
40 *the courts of this state with respect to the law of this state*

governing the conduct of attorneys to the same extent as a member of the State Bar of California.

~~(9)~~

(10) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application *or certificate*, and whether or not it was granted. *If the attorney has made repeated appearances, the certificate shall reflect the special circumstances that warrant the approval of the attorney's appearance in the arbitration.*

~~(10)~~

(11) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) *The arbitrator, arbitrators, or arbitral forum may approve the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) or, absent special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as the an attorney of record in the arbitration in which the certificate was filed.*

(e) *Within a reasonable period of time after the arbitrator, arbitrators, or arbitral forum approves the certificate, the attorney shall file the certificate with the State Bar of California and serve the certificate as described in Section 1013a on all parties and counsel in the arbitration whose address is known to the attorney.*

(f) An attorney who *fails to file or serve the certificate required by this section or files or serves* a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to *that certificate or any* of his or her acts occurring in the course of the arbitration.

~~(f)~~

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services

1 in this state in the course of and in connection with an arbitration  
2 pending in another state.

3 ~~(g)~~

4 *(h)* Notwithstanding any other provision of law, including  
5 Section 6125 of the Business and Professions Code, any party to  
6 an arbitration arising under collective bargaining agreements in  
7 industries and provisions subject to either state or federal law  
8 may be represented in the course of, and in connection with,  
9 those proceedings by any person, regardless of whether that  
10 person is licensed to practice law in this state.

11 ~~(h)~~

12 *(i)* Nothing in this section shall apply to Division 4  
13 (commencing with Section 3201) of the Labor Code.

14 ~~(i)~~

15 *(j)* (1) In enacting the amendments to this section made by  
16 Assembly Bill 2086 of the 1997–98 Regular Session, it is the  
17 intent of the Legislature to respond to the holding in *Birbrower v.*  
18 Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th  
19 643a (hereafter *Birbrower*), to provide a procedure for  
20 nonresident attorneys who are not licensed in this state to appear  
21 in California arbitration proceedings.

22 (2) In enacting subdivision~~—(g)~~ *(h)*, it is the intent of the  
23 Legislature to make clear that any party to an arbitration arising  
24 under a collective bargaining agreement governed by the laws of  
25 this state may be represented in the course of and in connection  
26 with those proceedings by any person regardless of whether that  
27 person is licensed to practice law in this state.

28 (3) Except as otherwise specifically provided in this section, in  
29 enacting the amendments to this section made by Assembly Bill  
30 2086 of the 1997–98 Regular Session, it is the Legislature’s  
31 intent that nothing in this section is intended to expand or restrict  
32 the ability of a party prior to the decision in *Birbrower* to elect to  
33 be represented by any person in a nonjudicial arbitration  
34 proceeding, to the extent those rights or abilities existed prior to  
35 that decision. To the extent that *Birbrower* is interpreted to  
36 expand or restrict that right or ability pursuant to the laws of this  
37 state, it is hereby abrogated except as specifically provided in this  
38 section.

39 (4) In enacting subdivision~~—(h)~~ *(i)*, it is the intent of the  
40 Legislature to make clear that nothing in this section shall affect

1 those provisions of law governing the right of injured workers to  
2 elect to be represented by any person, regardless of whether that  
3 person is licensed to practice law in this state, as set forth in  
4 Division 4 (commencing with Section 3200) of the Labor Code.

5 SEC. 2. Section 1282.4 of the Code of Civil Procedure, as  
6 amended by Section 2 of Chapter 607 of the Statutes of 2005, is  
7 repealed.

8 SEC. 3. (a) *The State Bar of California shall collect and*  
9 *record the information reported to the State Bar on certificates*  
10 *described in Section 1282.4 of the Code of Civil Procedure. The*  
11 *State Bar shall also collect other information that the State Bar*  
12 *deems appropriate to assist the Legislature in evaluating the*  
13 *appearance by out-of-state attorneys in arbitration hearings or*  
14 *proceedings in this state as described in Section 1282.4 of the*  
15 *Code of Civil Procedure, including, but not limited to, all of the*  
16 *following:*

17 (1) *The extent that out-of-state attorneys apply for and are*  
18 *approved to make repeated appearances in arbitration hearings*  
19 *or proceedings in this state or as counsel pro hac vice, during the*  
20 *two-year period covered by the certificate.*

21 (2) *The names of the arbitrators or arbitral forums approving*  
22 *each appearance by the out-of-state attorney.*

23 (3) *Any special circumstances that warrant repeat*  
24 *appearances.*

25 (4) *Other information regarding compliance with or*  
26 *complaints regarding the provisions of Section 1282.4 of the*  
27 *Code of Civil Procedure.*

28 (b) *On or before July 1, 2009, the State Bar of California shall*  
29 *report to the Legislature the findings and recommendations of*  
30 *the State Bar regarding the information described in subdivision*  
31 *(a). Those findings and recommendations shall include, but are*  
32 *not limited to, the need to improve compliance with the*  
33 *provisions of Section 1282.4 of the Code of Civil Procedure, the*  
34 *need to permit out-of-state attorneys to appear in arbitration*  
35 *hearings or proceedings in this state, and, if requested by the*  
36 *Legislature, any supporting documentation regarding those*  
37 *findings and recommendations.*